

AUG 31 2007

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IN THE DISTRICT COURT OF GUAM

J.C., a person with a disability,
S.F., a person with a disability, and,
J.M., a person with a disability,

Plaintiffs,

vs.

FELIX P. CAMACHO, in his official
capacity as Governor of Guam,

ROSANNE ADA, in her official capacity as
Director of the Department of Integrated
Services for Individuals with Disabilities,

DR. ANDREA LEITHEISER, in her
official capacity as Acting Director of the
Department of Mental Health and
Substance Abuse,

Defendants.

CIVIL CASE NO. CIV01-00041

STIPULATION

as previously consolidated with

ORIGINAL

1 R.A., a person with a disability,)
2)
3 Plaintiff,)
4)
5 FELIX P. CAMACHO, in his official)
6 capacity as Governor of Guam,)
7)

CIVIL CASE NO. CIV04-00005

8 The purpose of this Stipulation is to resolve Plaintiffs' motion for contempt filed March
9 26, 2007, Defendants' Motion to Modify the Amended Permanent Injunction filed May 11,
10 2007, and to extend the dates for compliance with deadlines set forth in the Order filed August
11 15, 2005 ("08/15/05 Order") and the Stipulation dated December 2, 2005 ("12/02/05
12 Stipulation"). The Court, being fully advised of the premises, and good and lawful cause
13 thereupon showing, hereby approves the stipulation and modifies the Amended Permanent
14 Injunction, 08/15/05 Order and 12/02/05 Stipulation as follows:

15 **I. ASSURANCES OF COMPLIANCE**

16 Defendants maintain that they have not been able to comply with certain deadlines
17 established in the Amended Permanent Injunction and subsequently extended by the 08/15/05
18 Order and 12/02/05 Stipulation. Plaintiffs dispute the contentions of the Defendants. However,
19 in order to resolve the dispute, Plaintiffs are entering into this Stipulation, which further extends
20 the aforesaid deadlines, and have been persuaded to do so because Defendants have represented
21 that: (1) there have been changes in Defendants' management and the current management
22 team is committed to complying with the requirements of the Amended Permanent Injunction;
23 (2) the Defendants have consulted with professionals and clinicians, including Andrea
24 Leitheiser, Ph.D., Judith Avery, Ph.D., Laura Post, M.D. Ph.D., and Zenaida Napa Natividad,
25 Ph.D, who have advised Defendants that the new deadlines set forth herein are realistic and
26 obtainable and that Defendants can and will meet these deadlines without need of any further
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1 extensions; and (3) the Defendants are fully committed to achieving compliance with the goals
2 of the Amended Permanent Injunction. As shall be further discussed, *infra*, in order to provide
3 additional assurances of timely compliance with the deadlines set forth herein, the Defendants
4 are also agreeing to the appointment of Court Monitors, who will monitor the progress towards
5 compliance with the new deadlines, and provide monthly written reports to the Court.
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7 **II. COURT MONITOR**

8 The parties stipulate that Monitors be appointed to monitor the Defendants' progress in
9 complying with the terms of the Amended Permanent Injunction and any subsequent orders of
10 the Court relating to the Amended Permanent Injunction.
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12 **A. Appointment of Monitors.** The parties agree to the appointment of dual
13 Monitors. Defendants collectively shall designate one person of their choosing to serve as a
14 Monitor. Plaintiffs collectively shall designate one person of their choosing to serve as a
15 Monitor. In the event either Monitor is unable to continue serving as Monitor, the party who
16 designated such Monitor shall designate a replacement Monitor.
17

18 **B. Responsibilities and Powers of the Monitor.**

19 1. The Monitors shall have full authority to assess, review, and report
20 independently on the Defendants' implementation of and compliance with the provisions of
21 Court orders and Parties' stipulations. No Party, nor any employee or agent of any Party, shall
22 have any supervisory authority over the Monitors' activities, reports, findings, or
23 recommendations. The Monitors shall not make any public statements to the media or
24 otherwise regarding their findings, reports, or communications with the Court, parties,
25 individuals or consumers.
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1 2. The overall duties of the Monitors shall be to at least monthly observe,
2 review, report findings, and make recommendations, where appropriate, with regard to the
3 implementation of Court orders and Parties' stipulations. The Monitors shall at least monthly
4 review the therapeutic and rehabilitation services provided to individuals to determine the
5 Defendants' implementation of and compliance with this Court's orders and the Parties'
6 stipulations. During the Monitors' at least monthly review, the Monitors shall have full and
7 complete access to all of Defendants or their contract providers' buildings and facilities, staff,
8 and to plaintiffs and those individuals similarly situated, i.e. individuals who are inpatients or
9 residents of Defendants' facilities, individuals who have previously been inpatients or residents
10 in Defendants' facilities, individuals at risk of being placed as inpatients or residents in
11 Defendants' facilities, and individuals who have sought admission as an inpatient or resident to
12 Defendants' facilities but who have been denied admission thereto (collectively "target
13 consumers"). The term target consumers does not include individuals who are not, have not
14 been or have not sought to be inpatients or residents of Defendants' facilities.
15

16 3. In conducting their reviews as set forth above, the Monitors shall have
17 full and complete access to all of the target consumers' records, documentation, and
18 information relating to the issues addressed in the Court's orders and Parties' stipulations. The
19 disclosures to the Monitors as outlined above shall be pursuant to the Order of this Court. In
20 accordance with 45 C.F.R. 164.512(e)(1) and (e)(1)(i) written authorization or the agreement of
21 the target consumers for such disclosure is not required. In accordance with the provisions of
22 42 U.S.C.A. §290dd-2, the Monitors shall not have access to a target consumer's records
23 relating specifically to alcohol or substance abuse education, prevention, training, treatment,
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1 rehabilitation or research, except in accordance with federal law regulating alcohol and
2 substance abuse records.

3 4. Defendants shall require that all of their employees, and all contract
4 providers and the employees of all contract providers, cooperate fully with the Monitors or the
5 Monitors' consultants. The Monitors shall be permitted to initiate and receive ex parte
6 communications with the Parties and the Special Master. The Monitors shall devote such time
7 as is necessary to fulfill the purposes of their duties and responsibilities as set forth herein.
8

9 5. The Monitors shall consult with the Parties and shall submit a written
10 plan with regard to the methodologies to be used by the Monitors to assess the Defendants'
11 compliance with and implementation of the Amended Permanent Injunction, Court's orders and
12 Parties' stipulations. The Monitors' evaluation shall include: at least monthly on-site
13 inspection of facilities and programs for target consumers, interviews with administrators,
14 professionals and other staff, contractors, and target consumers, and detailed review of
15 pertinent documents and target consumer records. The Parties' envision that the Monitors may
16 provide specific recommendations to the Defendants with regard to steps to be taken to come
17 into compliance with the Amended Permanent Injunction, Court's orders and Parties'
18 stipulations. The Monitors shall not be empowered to direct the Defendants to take, or to
19 refrain from taking, any specific action to achieve compliance with the Amended Permanent
20 Injunction, Court's orders and the Parties' stipulations, but the Monitors may include in their
21 reports to the Special Master recommendations that the Court enter such orders as the Monitors
22 deem appropriate.
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1 6. In any instance in which either party disagrees as to compliance, the
2 Court shall give such deference to the Monitors' assessment of compliance as the Court deems
3 appropriate.
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5 7. The Monitors shall provide the Court, counsel for the Plaintiffs and
6 counsel for the Defendants with a written report as soon as possible, but at least within thirty
7 (30) days of each tour, and shall detail with as much specificity as possible how the Defendants
8 are or are not in compliance with particular provisions of the Amended Permanent Injunction,
9 Court's orders and Parties' stipulations. Upon the achievement of eighteen (18) months of
10 substantial compliance with any substantive paragraph(s) of the Court's orders and Parties'
11 stipulations, no further reporting shall be required on that paragraph.
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13 8. The Defendants shall notify the Monitors immediately upon the death of
14 any current target consumer. The Defendants shall forward to the Monitors copies of any
15 completed incident reports related to deaths of target consumers, autopsies and/or death
16 summaries of target consumer residents, as well as all final reports of investigations that
17 involve target consumers.
18

19 9. In the event the Monitors disagree with each other as to any particular
20 matter addressed in such monthly report, the disagreement shall be noted, and each Monitor's
21 position and basis for such position shall be set forth within the Report.
22

23 **C. Consultants.** Either Monitor can, with notice to all parties, request that the
24 Court permit the Monitors to hire consultants to assist the Monitors in carrying out their duties.
25 If the Court approves the hiring of a consultant, the fees and expenses of such consultant shall
26 be paid by the Defendants in such manner as the Court may direct.
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1 **D. Reimbursement and Payment Provisions**

2 1. The cost of the Monitors shall be borne by the Defendants in this action.

3 All reasonable expenses incurred by the Monitors, in the course of the performance of the
4 duties of the Monitors, shall be reimbursed by the Defendants. Neither Monitor shall seek
5 reimbursement for fees, costs or expenses in excess of \$8,333.34 per month. The parties agree
6 that this amount should decrease after two years and the Defendants reserve their right to seek a
7 reduction in the cap amount to be paid to the Monitors at that time.
8

9 2. The Monitors shall submit no less than monthly invoices to the
10 Defendants, with copies to the Plaintiffs and the Court, detailing all expenses the Monitors
11 incurred during the prior month. These invoices shall include daily records of time spent and
12 expenses incurred, and shall include copies of any supporting documentation, including
13 receipts. The Defendants agree to pay each month's invoice in full within sixty (60) days of
14 receipt of the monthly invoice from the Monitors. Where the Monitor(s) and Defendants are
15 unable to resolve any invoice dispute, the Monitor(s) and/or the Defendants may petition the
16 Court to resolve the dispute.
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19 **III. WAITING LISTS.**

20 Defendants submitted a Waiting list to Plaintiffs in July, 2007, and a revised Waiting
21 List in August, 2007. The parties have had an initial meeting to discuss the Waiting List, and
22 the Plaintiffs are of the opinion that the process for creating the Waiting List has substantial
23 shortcomings and does not adequately address the directives of the Amended Permanent
24 Injunction. The parties agree to meet and confer and provide the Special Master with a
25 substantive solution to the problem within thirty (30) days of this Stipulation. In the event that
26 the parties are unable to reach agreement on a substantive solution, the parties shall submit their
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1 respective positions to the Court for resolution. The Monitors shall be included in meetings on
2 this process.

3 Defendants have advised the Plaintiffs that DMHSA and DISID, upon completion of
4 the aforesaid review, may seek to amend, pursuant to the Administrative Adjudication Act, the
5 Grievance Procedures and Waiting Lists Procedures in order to conform them to the Amended
6 Permanent Injunction, Court's orders and JCAHO standards, and in order to streamline the
7 procedures to ensure compliance with the applicable deadlines. Defendants shall provide
8 opportunities for Plaintiffs and interested consumers to meaningfully participate in the process
9 of revising the Grievance Procedures and Waiting Lists Procedures as they are being
10 formulated, and to comment on any proposed revisions. Defendants shall obtain the Court's
11 approval for the proposed amendments prior to holding hearings under the Administrative
12 Adjudication Act.

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15 **IV. AMENDED PLAN -- DEADLINE FEBRUARY 15, 2008**

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17 On February 15, 2008 the Defendants shall submit to the Plaintiffs and the Special
18 Master for their approval a revised Guam Comprehensive Integration Plan that amends and
19 updates the Guam Comprehensive Integration Plan previously submitted by Defendants on
20 October 11, 2005 and conditionally approved by the Plaintiffs. In developing the
21 Comprehensive Implementation Plan, Defendants shall comply with the requirements of the
22 Amended Permanent Injunction, including without limitation, section III (B) of the Amended
23 Permanent Injunction.

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25 **V. MINIMUM CARE REQUIREMENTS**

26 Defendants affirm that it is their goal to become JCAHO accredited, and to use JCAHO
27 standards as a "measuring stick" for measuring Defendants' progress toward compliance with
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1 their obligation to meet minimum care standards. Plaintiffs agree that progress toward JCAHO
2 accreditation can be made incrementally, and that as each of Defendants' programs or facilities
3 achieve JACHO accreditation, that Program or facility will be deemed to have met the
4 minimum care requirements under the Amended Permanent Injunction.

5
6 By October 1, 2007, the Directors of DMHSA and DISID shall submit to Plaintiffs'
7 counsel and the Special Master for their approval a list of measurable milestones identifying the
8 steps necessary for JCAHO accreditation. The list of measurable milestones shall contain
9 specific dates for the proposed completion of the periodic performance review required for
10 JCAHO accreditation. Plaintiffs agree that, with respect to any facility or program reviewed in
11 the *Evaluation of DMHSA and DISID Programs: JCAHO Accreditation Readiness,*
12 *Comprehensive Plan and Minimum Care Requirements* prepared by Silverlake Behavioral
13 Associates, LLC and submitted to Defendants in October, 2006, Defendants may, but are not
14 obligated to, satisfy the requirement of having measurable milestones by adopting Silverlake's
15 checklists and recommendations as to each such facility and program.

16
17 Plaintiffs reserve their right to maintain on a case-by-case basis that minimum care
18 requirements have not been met even though DMHSA and/or DISID have achieved JCAHO
19 compliance and accreditation. Defendants reserve their right to maintain on a case-by-case basis
20 that minimum care requirements have been met even though DMHSA and/or DISID have not
21 achieved JCAHO compliance and accreditation.

22 **VI. ATTORNEYS' FEES.**

23
24 The Court entered a Permanent Injunction on June 8, 2004 and an Amended Permanent
25 Injunction on June 30, 2005. The parties agree that Plaintiffs' post-judgment Motion for Order
26 to Show Cause was related to reasonable monitoring of compliance with the Amended
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1 Permanent Injunction and Orders of the Court, and has had the effect of enforcing compliance
2 with the Court's injunction. As such, the Defendants understand that the Plaintiffs are seeking
3 reimbursement for reasonable attorneys' fees and costs incurred in the Motion for Order to Show
4 Cause. Defendants further agree that legal authority exists to authorize the Court to award such
5 fees and costs. Defendants' reserve their right to object to any future award of attorneys' fees for
6 subsequent motions or proceedings in this case. Likewise, Plaintiffs reserve their right to
7 maintain that they are entitled to attorneys' fees for any future motion. Payment of the
8 attorneys' fees awarded to the Plaintiffs by the Court for their Motion for Order to Show Cause
9 shall be made to the trust account of Plaintiffs' counsel within thirty (30) days of the date of this
10 Stipulation.
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13 **VII. MISCELLANEOUS**

14 A. The deadlines in the Amended Permanent Injunction, 08/15/05 Order, and
15 12/02/05 Stipulation are modified only as set forth in this Stipulation.
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17 B. Plaintiffs agree that hearing on their Motion for Order to Show Cause Re
18 Contempt filed March 26, 2007 shall be stayed until February 28, 2008, at which time the
19 motion shall be withdrawn if the Defendants are in compliance with the Amended Permanent
20 Injunction, and subsequent orders of the Court (including any Order adopting or incorporating
21 the terms of this Stipulation). Defendants shall withdraw their Motion to Modify the Amended
22 Permanent Injunction filed May 11, 2007.
23

24 C. Nothing in this Stipulation shall be construed as an admission by Plaintiffs that
25 Defendants are in compliance with provisions of the Amended Permanent Injunction which are
26 not specifically addressed by this Stipulation, or as a waiver by the Plaintiffs of any claims they
27 may have relating to Defendants' compliance with the Amended Permanent Injunction and
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1 subsequent orders of the Court or their right to seek appropriate relief for the failure by
2 Defendants to comply with provisions of the Amended Permanent Injunction and any
3 subsequent orders of the Court.

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5 D. This Stipulation and each of its provisions shall not be construed as an admission
6 by Defendants or any of their representatives of any fault, wrongdoing, negligence, willful
7 misconduct or liability of any kind whatsoever and this instrument is entered into solely as a
8 compromise in an effort to obviate further litigation, controversy, costs, and expenses.

9
10 E. This Stipulation shall become effective when it is approved by the Court.

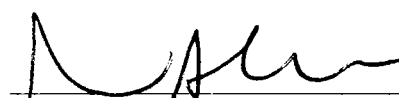
11 ***SO STIPULATED:***

12 CIVILLE & TANG, PLLC

MAIR MAIR SPADE & THOMPSON
A Professional Corporation

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14 

15 G. PATRICK CIVILLE
Attorneys for Plaintiffs

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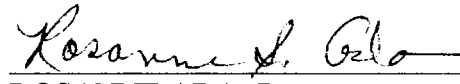
DAVID A. MAIR
Attorneys for Defendants

18
19 OFFICE OF THE GOVERNOR

DEPARTMENT OF INTEGRATED SERVICES
FOR INDIVIDUALS WITH DISABILITIES

20 

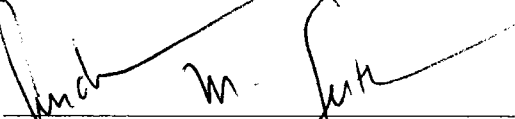
21 FELIX P. CAMACHO
Governor of Guam
Defendant

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23 

ROSANNE ADA, *Director*
Defendant

24 DEPARTMENT OF MENTAL HEALTH & SUBSTANCE ABUSE

PUBLIC GUARDIAN OF GUAM
Guardian for Plaintiff R.A. and S.F.

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27 DR. ANDREA LEITHEISER, *Director*
Defendant

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